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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 262

MRS. MARTHA BAILEY CRICHTON,
Petitioner,

v.

SUCCESSION OF POWELL CRICHTON (MISS MARGARET S. HEMINGWAY, ANCILLARY TESTAMENTARY EXECUTRIX), MRS. GLORIA CRICHTON McGEHEE and POWELL CRICHTON, JR.,
Respondents.

Brief of Respondents Mrs. Gloria Crichton McGehee and Powell Crichton, Jr. in Opposition to Petition for Writ of Certiorari

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INTRODUCTION

Petitioner here attempts under the guise of due process and equal protection to compel the courts of Louisiana to refuse full faith and credit to a final judgment of the highest court of New York determining her marital rights to intangible personal properties of her husband's estate.

At his death the decedent, a New York domiciliary, was possessed of money in Louisiana banks, and stocks, bonds and other intangibles the physical evidence of which was in the hands of a Louisiana agent. The case, as originally presented to the courts of New York and Louisiana during the administration of the estate, was concerned with whether the law of the decedent's domicile (and of the matrimonial domicile), on the one hand, or the community property law of Louisiana, on the other, should properly govern the widow's rights with respect to the intangibles. But the question as so presented is no longer pend-

ing anywhere. In a proceeding fought tooth and nail between the present litigants and concluded more than three years ago in the New York courts, the choice of law issue was resolved against Petitioner. The New York courts had jurisdiction of the subject matter and *in personam* jurisdiction of the litigants. The matter then became, in Louisiana, one involving routine application of the Full Faith and Credit Clause of the Constitution. The Louisiana courts, following long-standing jurisprudence of this Court, gave recognition to the New York judgment—and there the matter should end.

Because the widow has sought to invoke Fourteenth Amendment guarantees as her foothold in this Court, brief comment is necessary as to the statement in her Petition of the constitutional provisions involved, the question presented and the manner in which her purported federal questions were raised in the courts below.

CONSTITUTIONAL PROVISION PRESENTED

We submit that the only provision of the United States Constitution which this case involves is the Full Faith and Credit Clause:

Article IV, Section 1

"Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state * * *"

QUESTION PRESENTED; RAISING OF FEDERAL QUESTIONS

The Petition for certiorari describes the questions presented as being ones of due process and equal protection. We emphatically disagree. As we shall show, Petitioner's invocation of federal due process came almost as an

afterthought in the Louisiana court whose decision is sought here to be overturned.

As we understand the Petition, it is the effect of the New York decision which Petitioner claims offends her constitutional rights. Yet we find no indication whatever that these so-called federal questions of due process and equal protection were raised in any manner at any of the three levels of the New York court system in which the case was heard; and obviously no effort was made to seek certiorari in this Court following the decision of the New York Court of Appeals.[1]

This Court will find that Petitioner received full measure of due process by her active participation in the New York proceedings, and that, having lost there, what she then sought in Louisiana was not due process but a second bite at the apple—exactly what the Full Faith and Credit Clause forbids. Therefore, the true question presented in this Court may be fairly stated as:

> SHOULD THE UNITED STATES SUPREME COURT OVERTURN THE RECOGNITION BY ONE STATE, PURSUANT TO THE FULL FAITH AND CREDIT CLAUSE, OF A FINAL JUDGMENT OF A SISTER STATE DETERMINING THE OWNERSHIP OF INTANGIBLE PERSONAL PROPERTY IN A PROCEEDING IN WHICH ALL PARTIES ACTIVELY PARTICIPATED AND IN WHICH THE COURT DETERMINED THAT IT HAD JURISDICTION OF THE SUBJECT MATTER?

STATEMENT OF THE CASE

The facts are largely undisputed, and the statement of them in the Petition for certiorari is essentially correct. However, since that statement assumes as true certain

[1] See further discussion of Petitioner's failure to raise substantial federal questions at pages 28-31, *infra*.

factual matters which are in dispute, and since it overemphasizes certain aspects of the case to the exclusion of others, we choose to begin with a factual statement and some prefatory comment on the procedural picture at this juncture.

The decedent, Powell Crichton, died on November 15, 1962, while a domiciliary and resident of Westchester County, New York (R. 17, 19).[2] He was survived by his wife, Mrs. Martha Bailey Crichton (Petitioner), who resides in Bermuda (and from whom he had been separated for more than twenty-five years), by two children of his marriage to her, Kate Crichton and Edward Bailey Crichton, and by two children of a prior marriage, Powell Crichton, Jr. and Mrs. Gloria Crichton McGehee (Respondents) (R. 13, 17, 28). He died testate, and his will, dated November 13, 1953, was admitted to probate in the Surrogate's Court of Westchester County, New York. Margaret S. Hemingway, the testamentary executrix, qualified in that court on February 11, 1963 (R. 32, 33). On August 20, 1963, an ancillary probate proceeding was opened in Webster Parish, Louisiana (R. 12, et seq.), and, some nine months later, on April 28, 1964, letters testamentary were issued to Miss Hemingway by the Louisiana Court (R. 73).

On the same day that she received letters of administration, the executrix filed in the Louisiana District Court an inventory purporting to describe and value the properties owned by the decedent in the State of Louisiana (R. 51, et seq.). In addition to interests in numerous tracts of land, the inventory included various intangible personal properties identified as being community property of the decedent's second marriage. Within that category were listed bank deposits, United States Treasury certificates, corporate stock, a cash balance held by a Louisiana agent

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[2] Page references are to the record of the proceeding in the Louisiana Court of Appeal, Second Circuit, from the decision of which court Petitioner seeks certiorari here.

and a partnership interest in a hardware business (R. 67, et seq.).

Respondents, the children of the first marriage, excepted to the jurisdiction of the court to pass upon the ownership of the intangible movable properties described in the inventory, on the ground that those properties had their situs at the domicile of the decedent in New York (R. 125, 140). The same children also tendered answers to the rule to approve the inventory brought by the executrix, reiterating the lack of jurisdiction, and asserting the applicability of New York law (R. 128, 132). In the alternative, the answer pleaded that, even if Louisiana law should be applied, the decedent's separate estate was owed an indebtedness by the community equal to the inventoried value of the personal properties.[3]

In connection with the rule to approve the inventory, the widow, Martha Bailey Crichton, petitioned for possession of an undivided one-half interest in the property inventoried as community, both real and personal (R. 108). The widow also sought and obtained an injunction prohibiting the executrix from transferring the assets out of the State of Louisiana pending adjudication of her claims (R. 118, 157, 163).

On January 4, 1966, the district court overruled the jurisdictional exceptions filed by Respondents (R. 163).

Meanwhile, matters were progressing in New York. The executrix had filed an intermediate account in the proceedings there, in which it was proposed that the widow be paid some $156,000.00 as her share of Louisiana com-

[3] In Louisiana, dissolution of the community (by death, divorce or legal separation) often requires an accounting between the community estate and the separate estates of one or both spouses. See, for example, *Huie*, "Separate Claims to Reimbursement from Community Property in Louisiana," 27 *Tulane Law Review* 143 (1953).

munity property. The account was opposed by Respondents, in much the same way, procedurally, that they opposed the inventory in the Louisiana proceedings (R. 175, et seq.).

On March 17, 1966, shortly before the date then set for trial of the factual issues (that is, the demand for an accounting by the former community to the decedent's separate estate) involved in the Louisiana proceedings, the New York Surrogate's Court handed down a decision, *in a proceeding held contradictorily with the widow* and the executrix, decreeing that the law of New York governed the rights of the widow, that the Court *had jurisdiction* over her *person* and over the *subject matter*, and that she had no claim whatever to any intangible personal properties of the estate, including, specifically, the personal properties inventoried in the Louisiana succession (R. 175-192).[4]

By motion for partial summary judgment, Respondents immediately sought recognition of the New York decree in the ancillary proceedings in Louisiana under Article IV, Section 1, of the United States Constitution, the Full Faith and Credit Clause (R. 170, et seq.).[5] The district court denied that motion on May 4, 1966 (R. 212), and supervisory writs were refused by the Louisiana Court of Appeal, Second Circuit (R. 218), and by the Louisiana Supreme Court (R. 219) on the ground that an adequate remedy could later be had by appeal.

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[4] *In Re Crichton's Will*, 49 Misc. 2d 405, 267 N. Y. S. 2d 706 (1966) (App. p. 34a).

[5] The judgment of the New York Surrogate's Court, though subject to appeal, was a final judgment for res judicata purposes under New York law. 50 C. J. S., *Judgments*, § 701, p. 157; *Bell v. Bell*, 17 N. Y. S. 2d 692 (1939), affirmed 16 N. Y. S. 2d 1018 (1939); *Parkhurst v. Berdell*, 110 N. Y. 386, 18 N. E. 123 (1888); *Annotation*, 9 A. L. R. 2d 984, 1000.

On July 5, 1966, the Appellate Division of the Supreme Court of New York *unanimously affirmed* the judgment of the Surrogate rejecting the widow's claim,[6] and, on June 1, 1967, the New York Court of Appeals likewise *unanimously affirmed*, finding that New York had the dominant interest in the marital property rights of its domiciliaries and concluding, moreover, that the Louisiana courts very likely would have applied New York law had the choice of law problem been presented to them.[7]

The trial in Louisiana took place on December 12, 1966. At the trial and in briefs subsequently filed in the district court, Respondents again urged that the only issue was one of full faith and credit and that, even if the court should fail to recognize that it was compelled to accept the New York judgment as determinative, it should itself apply the law of New York as enunciated in the opinion of the New York Court of Appeals. With full reservation of their rights, Respondents then introduced proof in the form of accounting testimony and exhibits to the effect that the decedent's Louisiana assets, despite changes in form and commingling of funds, were basically capital in a family business which had been inherited from the decedent's parents and hence were not community property (R. 310, et seq.).[8] The widow also produced accounting testimony on this question (R. 335, et seq.).

On February 13, 1969, the Louisiana court recalled its earlier ruling (on Motion for Partial Summary Judgment)

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[6] *In the Matter of the Will of Powell Crichton, Deceased*, 26 A. D. 2d 639, 272 N. Y. S. 2d 987 (1966).

[7] *In Re Estate of Crichton*, 20 N. Y. 2d 129, 281 N. Y. S. 2d 811, 228 N. E. 2d 799 (1967). (App. p. 54a).

[8] We disagree with the statement on page 6 of the Petition that all of the properties in question were acquired during the decedent's marriage to Petitioner.

and held that the New York proceeding was res judicata of the issues and was entitled to full faith and credit.[9] The court went on to say that the matter had been properly resolved by the application of *New York* law (R. 238, et seq.).

On appeal the Louisiana Court of Appeal, Second Circuit, on January 6, 1970, held that it was bound to accord full faith and credit to the decision of the New York Court of Appeals, basing its decision on applicable decisions of this Court.[10] Two members of the three-judge panel went on to say, in pure dictum, that absent the requirement of full faith and credit, they would find that Article 2400 of the Louisiana Civil Code[11] governed, with the result that the widow had a community interest in the intangible properties. In a concurring opinion the third member of the panel (App. p. 31a, et seq.) said that the court had no business going beyond full faith and credit and res judicata, expressing his opinion that New York

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[9] Petitioner in this Court complains (P. p. 11) that the Louisiana district court's reversal of its prior decision was without warning to her—yet Respondents devoted a very substantial portion of their brief in that court to the argument that the court erred in overruling the motion for partial summary judgment and in urging that the court recall its earlier order; Petitioner had ample time to rebut that argument and, following the decision, she could have under applicable practice (see *Louisiana Code of Civil Procedure, Article 1971*) moved for a new trial, which she failed to do. In this connection, see discussion of Petitioner's failure to raise the federal questions she now raises, *infra*, pp. 28-31.

[10] Including particularly: *Magnolia Petroleum Company v. Hunt*, 320 U. S. 430, 88 L. Ed. 149 (1944); *Durfee v. Duke*, 375 U. S. 106, 11 L. Ed. 2d 186 (1963); and *Milliken v. Meyer*, 311 U. S. 457, 85 L. Ed. 278 (1941).

[11] "All property acquired in this State by non-resident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State." *Louisiana Civil Code (1870), Article 2400.*

law might indeed apply and, further, that if the court was going into the question it should do so fully and should examine the evidence relative to the accounting between separate and community assets.

A rehearing was refused on March 3, 1970, and on April 20, 1970, the Louisiana Supreme Court *unanimously* refused a writ of review with the per curiam *"The result is correct"*,[12] the most likely interpretation of which obviously is that the Supreme Court agreed that the Full Faith and Credit Clause was applicable and that the case was disposed of correctly, but that it was unwilling to subscribe to the Court of Appeal's gratuitous comments about the scope of Article 2400 of the Civil Code.

SUMMARY OF ARGUMENT

The Court is here asked to review a Louisiana decision giving effect, under the Full Faith and Credit Clause of the Constitution, to a New York judgment determining the ownership of intangible personal property of a deceased New York domiciliary. In the argument which follows, it will be shown that:

1) The Full Faith and Credit Clause demands that a final judgment rendered by the court of one state be given the same force and effect in every other state that it has in the state of rendition, and the reasons underlying the judgment are not subject to re-examination.

2) The litigation in the New York court system and the subsequent proceeding in Louisiana involved the same parties and the same subject matter. The New York courts had jurisdiction over both. The New York judgment therefore satisfies all requirements of res judicata and full faith and credit.

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[12] App. p. 33a.

3) Petitioner failed to raise, at any stage of the litigation in New York, the purported issues of federal due process and equal protection which she now asserts, and she failed to seek certiorari in this Court following the adverse decision there. Moreover, she failed to raise the alleged federal questions at the trial level in Louisiana, and did so only as an afterthought in the Louisiana appellate court.

4) Even though the Full Faith and Credit Clause precludes re-examination of the merits of the case, the New York decision is eminently correct and is consistent with the Louisiana jurisprudence on the question of ownership of intangible personal property.

ARGUMENT

I

The Judgment of the New York Surrogate's Court, as Affirmed on Appeal, Is a Final Judgment of a Court Having Jurisdiction of the Parties and the Subject Matter, and Was Properly Accorded Full Faith and Credit in the Louisiana Courts.

A. Every Final Judgment of a State Must Be Given the Same Force and Effect in Every Other State That It Has in the State of Rendition, If the Court Rendering It Has Jurisdiction of the Parties and the Subject Matter.

Notwithstanding the dictum in the majority opinion of the Louisiana Court of Appeal, we submit that the choice of law rules applied by the New York courts were not only correct, but are compatible with Louisiana law.[13] However, consistent or not, there can be no question that the Louisiana courts were correct in determining that they must give effect to the New York judgment.

This Court has characterized the requirement that each state accord faith and credit to the judicial proceedings of its sister states as "a nationally unifying force".[14] The language of the Constitution's mandate[15] provides simply:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. * * *"[16]

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[13] See discussion in Section II of Argument, *infra*, page 31.

[14] *Magnolia Petroleum Company v. Hunt*, 320 U. S. 430, 439, 88 L. Ed. 149, 155 (1944).

[15] *Article 4, Section 1, United States Constitution.*

[16] Supplementing this mandate is the "Act of Congress," 28 U. S. C., § 1738:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authen-

In *Durfee v. Duke*, 375 U. S. 106, 11 L. Ed. 2d 186 (1963), the Court recently stated the general rule in these succinct words:

> "The constitutional command of full faith and credit, as implemented by Congress, requires that 'judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such state . . . from which they are taken.' *Full faith and credit thus generally requires every State to give to a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it.* 'By the Constitutional provision for full faith and credit, the local doctrines of res judicata, speaking generally, become a part of national jurisprudence, and therefore federal questions cognizable here.' Riley v. New York Trust Co., 315 U. S. 343, 349, 86 L. Ed. 885, 891, 62 S. Ct. 608." (11 L. Ed. 2d 190; emphasis supplied.)

Another clear statement of the rule appears in 30A Am. Jur., *Judgments*, § 241, p. 310:

> "The effect of the full faith and credit clause and of the act of Congress implementing it, which

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ticated by affixing the seal of such State, Territory, or Possession thereto.

"The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, *shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.*" (Emphasis supplied.)

provides that judgments shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken, is to make that which has been adjudicated in one state res judicata to the same extent in every other state. *Thus, a judgment of a state court has the same force and effect in other states as res judicata that it has in the state of rendition.*" (Emphasis supplied.)

Full faith and credit may not be refused on the ground that the judgment is wrong or that the forum court would now decide the controversy differently:

"Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry . . . But if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed[17] unless disapproved by extrinsic evidence, or by the record itself.' Adam v. Saenger, supra (303 U. S. at p. 62; 82 L. Ed. 651, 58 S. Ct. 454). *In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based* . . . Whatever mistakes of law may underlie the judgment . . . it is 'conclusive as to all media concludendi.' Fauntleroy v. Lum, supra (210 U. S. at p. 237, 52 L. Ed. 1042, 28 S. Ct. 641)." (Emphasis supplied.)

Milliken v. Meyer, 311 U. S. 457, 462, 85 L. Ed. 278, 282, 283 (1941).

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[17] Jurisdiction over the *cause* and the *parties* by the New York courts in the instant case does not rest upon presumption but, rather, upon adjudicated fact. See pages 20-21, *infra*.

Nor may full faith and credit be refused on the grounds that the judgment is based on laws, customs and public policy which differ from those of the forum state. While a state may decline to recognize a *statute* which is repugnant to its own laws, it must give recognition to a *judicial decision* based on that statute; for purposes of full faith and credit, then, a judgment and a statute stand on different footings.

One of the leading cases holding that the public policy of the forum state is to be disregarded in according full faith and credit to a judgment of a sister state is *Fauntleroy v. Lum*, 210 U. S. 230, 52 L. Ed. 1039 (1908), in which Mississippi was required to recognize a Missouri judgment upholding an arbitrator's award on a debt arising out of the sale of cotton futures. The original cause of action arose in Mississippi, where futures contracts were unlawful gambling transactions and therefore unenforceable. The Court held that, notwithstanding Mississippi's laws and policies, the Constitution required full faith and credit to be given to the Missouri judgment.

An excellent and comprehensive review of the subject is found in *Magnolia Petroleum Company v. Hunt*, 320 U. S. 430, 88 L. Ed. 149 (1944). In that case a Louisiana domiciliary was injured in Texas and obtained there an award of workmen's compensation which, under Texas law, had the force of a final judgment. The courts of Louisiana later permitted the workman to recover a second time under the Louisiana workmen's compensation laws, justifying their award on the ground that they were not constitutionally required to disregard their own laws and policies otherwise applicable to the employment injury. The Supreme Court reversed, saying:

> "* * * The contention is that since Louisiana is better satisfied with the measure of recovery allowed by its own laws, it may deny full faith and credit to

the Texas award, which respondent has procured by his election to pursue his remedy in that state. *In thus refusing, on the basis of state law and policy, to give effect to the Texas award as a final adjudication of respondent's claim for compensation for his injury suffered in Texas, the Louisiana court ignored the distinction, long recognized and applied by this Court, and recently emphasized in Williams v. North Carolina, supra (317 U. S. 294, 296, 87 L. Ed. 283, 284, 63 S. Ct. 207, 143 ALR 1273), between the faith and credit required to be given to judgments and that to which local common and statutory law is entitled under the Constitution and laws of the United States.*

"* * *

"The full faith and credit clause and the Act of Congress implementing it have, for most purposes, placed a judgment on a different footing from a statute of one state, judicial recognition of which is sought in another. * * *

"* * * *

"The constitutional command requires a state to enforce a judgment of a sister state for its taxes, * * * or for a gambling debt * * *, or for damages for wrongful death, * * * although the suit in which the judgment was obtained could not have been maintained under the laws and policy of the forum to which the judgment is brought. It compels enforcement of a judgment in that forum, even though a suit upon the original cause of action was barred there by limitations before the judgment was procured, * * *. *It demands recognition of it even though the statute on which the judgment was founded need not be applied in the state of the forum because in conflict with the laws and policy of that state.* * * *

"* * *

"These consequences flow from the clear purpose of the full faith and credit clause to establish throughout the federal system the salutary principle of the common law that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered, so that a cause of action merged in a judgment in one state is likewise merged in every other. The full faith and credit clause like the commerce clause thus became a nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application. * * * Because there is a full faith and credit clause a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment and a plaintiff may not for his single cause of action secure a second or a greater recovery." (88 L. Ed. 153, et seq.; emphasis supplied.)[18]

These authorities clearly demonstrate that even if there should be any differences between the laws and policies of the States of New York and Louisiana, they were rendered immaterial by the final judgment in the New York proceeding.

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[18] The same rule is recognized by Professor Stumberg in his treatise, *Principles of Conflict of Laws* (3d. ed. 1963), wherein it is said, at page 117:

"It is well settled that the fact that the original cause of action is against the public policy of the forum, or that the foreign court made a mistake of law, is not a valid ground for refusing to allow suit upon the judgment."

See also 30A Am. Jur., *Judgments*, § 253, p. 320.

B. The Adjudication by the New York Surrogate's Court Involved the Same Parties and the Same Subject Matter as the Present Proceeding, and the Court There Had Jurisdiction Over Both.

An examination of the opinion of the New York Surrogate's Court (App. p. 34a)[19] will readily disclose that the same parties to this proceeding were parties to the suit there. That opinion, and the opinion of the New York Court of Appeals (App. p. 54a), likewise reflect that the issue of ownership of the intangible movable properties inventoried in Louisiana was squarely and fully litigated, with the result that there now exists a final judicial determination that those properties belong solely to the estate of the decedent, and that his surviving widow has absolutely no interest in them.

Petitioner took the position in the Louisiana appellate court that Louisiana had exclusive jurisdiction over the intangibles in question. But it seems clear that, until she filed her brief in that court, she had never contended (either in New York or Louisiana) that the New York domiciliary court lacked jurisdiction over those properties, but only that the Louisiana court had *concurrent* jurisdiction for certain purposes of administration, and that her rights would be better protected in a Louisiana forum. In her brief on the jurisdictional question presented to the Louisiana trial court, it was said, at page 15:

> "* * * Mrs. Martha Bailey Crichton, herself a non-resident, has *elected* to invoke the jurisdiction of this Court for a determination of those rights." (Emphasis supplied.)

And, further:

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[19] An authenticated copy of the opinion, along with the Final Order of that Court, is at pages 175, et seq. of the Record.

"This Court has jurisdiction to pass upon the question of ownership which has thus been *submitted* to it as to property over which it has physical custody and control, there can be no doubt." (Emphasis supplied.)

Further evidence of the widow's recognition of the jurisdiction of the New York court is found in the affirmative action taken by her in asserting her claim there:

"Martha Bailey Crichton, widow of the deceased, having claimed in her Notice of Appearance that she was: '* * * an owner of a one-half interest in the personal property which formerly belonged to the community of acquets and gains existing between her and the decedent, * * *' and said claim having been repeated in her objections filed herein; * * *" (App. p. 50a, R. 190.)

It seems apparent that her change of position on appeal took place because the widow had improvidently relied on the principle of *priority of jurisdiction.*[20] It is relevant to note here that even if otherwise applicable[21] the priority principle has no application when the proceedings in one state reach final judgment:

"*The priority principle is not applicable, as a matter of duty, between courts of different American states.* As a matter of comity, however, a court of one state may stay a proceeding pending before it on the ground that a case involving the same subject matter and the same parties is pending in the court of

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[20] In the Louisiana district court, she asserted this argument in the brief on Respondents' motion for partial summary judgment, page 23.

[21] Actually, the Louisiana court never had priority. The New York court first acquired jurisdiction over the estate and all questions involved therein when the will was presented to it for probate on February 11, 1963. The jurisdiction of the Louisiana court was not invoked until more than six months later when, on August 20, 1963, the ancillary proceeding was opened.

another state. *And, of course, in view of the full faith and credit clause of the Federal Constitution, once the proceeding on the same case has been finally adjudicated by the court of a sister state, res judicata effect must be given to it by the court of the forum state.*" 20 Am. Jur. 2d, *Courts*, § 137, p. 486 (Emphasis supplied.)[22]

The acceptance of jurisdiction by the Surrogate was consistent with accepted principles relating to administration of movable properties of a decedent. In Section 470 of the *Restatement of Conflict of Laws*, it is said, in part:

"1. A judgment in administration proceedings by a competent court in the state of domicil will be followed by the courts in other states *in so far as the judgment relates to movables.*

"* * *

"3. A judgment in administration proceedings in *any state* is conclusive *upon all persons* who become subject to the jurisdiction of the court in such proceedings." (Emphasis supplied.)[23]

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[22] The Louisiana courts have recognized and applied this rule. In *Mente & Co., Inc. v. Anciens Etablissements Verdier-Dufour & Cie.*, 177 La. 829, 149 So. 492 (1933), there were before the court for consideration two suits involving the same issues between the same parties, one in Louisiana *which had been first filed*, and the other in New York *instituted approximately one year later*. The Louisiana Supreme Court, holding that a final judgment rendered first in New York would be dispositive of the suit in Louisiana, recognized that:

> "For, when two suits involving the same issues between the same parties are brought before two separate courts *each clothed with jurisdiction thereof*, and both suits are allowed to proceed pari passu, the first judgment rendered in either of said courts is the judgment between the parties, and the suit in the other court immediately abates and must be dismissed." (177 La. 833-834; emphasis supplied.)

[23] "Jurisdiction over the owner of an intangible thing will, in most cases, enable the state to affect the intangible thing as it desires to do." *Restatement of Conflict of Laws*, § 51, Comment b.

And we take it that Petitioner makes no effort whatever to say that the New York Surrogate lacked jurisdiction over her person—she was represented by counsel and actively participated in the proceedings in that court (R. 175).

Whether or not the widow conceded subject-matter jurisdiction in New York, and, for that matter, whether such jurisdiction even existed, has now become irrelevant—for, *once a court determines that it has jurisdiction over the subject matter, in a case in which it has personal jurisdiction over the parties, that determination is itself entitled to recognition under the Full Faith and Credit Clause.* And there cannot be the slightest question that the New York courts did determine that they had jurisdiction:

> "There are a number of questions which must be resolved by this appeal. *The first of these relates to the jurisdiction of the Surrogate to determine whether or not the widow has a community interest in the property in question.* It is urged that the 'Surrogate's Court erred in determining the ownership of property situated in Louisiana since the Surrogate's Court did not have jurisdiction over such property nor over the ancillary executrix appointed in Louisiana.'
>
> "There is little question but that the Surrogate lacked the power to determine the rights of persons, not parties to this proceeding and over whom he had no jurisdiction, in the bank accounts, stocks and bonds located in Louisiana. (Hanson v. Denckla, 357 U. S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283; Riley v. New York Trust Co., 315 U. S. 343, 62 S. Ct. 608, 86 L. Ed. 885; Baker v. Baker, Eccles & Co., 242 U. S. 394, 37 S. Ct. 152, 61 L. Ed. 386.) *The Surrogate, however, does have the power to render a decree which is binding*

on those persons over whom he has in personam jurisdiction. (Hanson v. Denckla, supra, 357 U. S., p. 254, 78 S. Ct. 1228.)

"It is not disputed that the Surrogate had such jurisdiction over the widow and other beneficiaries of the estate. The Surrogate also had jurisdiction over the sole executrix of the estate. * * *" (Emphasis supplied.)[24]

Probably the leading case on the principles of jurisdictional finality is *Durfee v. Duke*, 375 U. S. 106, 11 L. Ed. 2d 186, decided by this Court in 1963, the decision being particularly convincing because the subject matter in question there was land. The suit was brought in a Nebraska court to quiet title to certain bottom land located on the Missouri River, which forms the boundary between the states of Nebraska and Missouri. The plaintiff derived his title from the State of Nebraska and the defendant from the State of Missouri, the determinative issue being whether the land was created by alluvial or by avulsive action of the river. Obviously the Nebraska court could have territorial jurisdiction of the subject matter only if the land was in that state. The parties actively litigated the question in the Nebraska courts, resulting in a final judgment of the Supreme Court of Nebraska to the effect that the land was in Nebraska and owned by the plaintiff. The defendant then commenced an action in the Missouri courts on the ground that, if the land was in fact in Missouri, the Nebraska court could not have had jurisdiction of the subject matter.

The United States Supreme Court unanimously held that, *having personally appeared and litigated the question of jurisdiction in the Nebraska court, the defendant was barred from relitigating that issue in the courts of Mis-*

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[24] *In Re Estate of Crichton*, 20 N. Y. 2d 120, 281 N. Y. S. 2d 811, 815, 228 N. E. 2d 799 (1967). (App. pp. 57a-58a).

souri. That is, the Full Faith and Credit Clause required Missouri to give the same res judicata effect to the Nebraska judgment that it would have in the Nebraska courts. The Court noted, of course, that the decision would affect only the parties who were *personally subject to the jurisdiction of the Nebraska court,* and could not affect the states of Nebraska and Missouri, which were not parties, and which could be compelled to litigate their common boundary only in an original action in the Supreme Court.

We submit that the principle of jurisdictional finality, as enunciated in *Durfee v. Duke,* is squarely determinative of the present case:

> "This doctrine of jurisdictional finality was applied even more unequivocally in Treinies, supra [*Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 84 L. ed. 85 (1940)], *involving title to personal property,* and in Sherrer, supra [*Sherrer v. Sherrer*, 334 U. S. 343, 92 L. ed. 1429 (1948)], involving, like Davis, recognition of a foreign divorce decree. In Treinies, the rule was succinctly stated: '*One trial of an issue is enough. "The principles of res judicata apply to questions of jurisdiction as well as to other issues," as well to jurisdiction of the subject matter as of the parties.*' 308 U. S., at 78, 84 L. ed. at 93." (11 Ed. 2d 192; emphasis supplied.)

The Court clearly distinguished the older case of *Fall v. Eastin,* 215 U. S. 1, 54 L. Ed. 65 (1909), which was cited and relied upon by Petitioner in the Louisiana courts:

> "It is argued that an exception to this rule of jurisdictional finality should be made with respect to cases involving real property because of this Court's emphatic expressions of the doctrine that courts of one state are completely without jurisdiction directly to affect title to land in other States [citing, in Footnote

614, *Fall v. Eastin* and other cases]. *This argument is wide of the mark.* Courts of one State are equally without jurisdiction to dissolve the marriages of those domiciled in other States. *But the location of land, like the domicile of a party to a divorce action, is a matter 'to be resolved by judicial determination'.* Sherrer v. Sherrer, 334 U. S. at 349, 92 L. ed. at 1435, 1 A. L. R. 2d at 1361. *The question remains whether, once the matter has been fully litigated and judicially determined, it can be retried in another state in litigation between the same parties. Upon the reason and authority of the cases we have discussed, it is clear that the answer must be in the negative.*" (11 L. Ed. 2d 193; emphasis supplied.)

Treinies v. Sunshine Mining Co., 308 U. S. 66, 84 L. Ed. 85 (1940), cited by the Court in the *Durfee* case, is another good example of the rule of jurisdictional finality. The holding is clear that *once a competent court having jurisdiction over the parties determines the ownership of personal property, full faith and credit is a bar to further litigation of the question.* In that case the Court was concerned with the res judicata effect of a prior decision of the Idaho courts in an interpleader action filed in Federal Court in the state of Washington. The dispute involved the ownership of stock in a Washington corporation, and the decisive question was whether the stock had previously been distributed in a Washington probate proceeding or whether it was subject to the further jurisdiction of the Washington court. The Idaho courts determined that they had jurisdiction because the stock had been distributed to the legatees, thus divesting the Washington court (a court of limited jurisdiction) of further authority to pass on the question of ownership as between the distributees and their transferees. This Court held that this determination by the Idaho court of its own jurisdiction was entitled to full faith and credit in the Washington courts. The case

thus stands not only for the principle of jurisdictional finality, but also represents a clear application of the rule that once parties who are before a court *in personam* have fully litigated title to movable properties, regardless of any so-called "situs" that the properties may have, the decision is conclusive and is entitled to full faith and credit under the Constitution.

C. The Full Faith and Credit Clause Has Been Found Particularly Applicable in Resolving Attempted Relitigation of Matters Concerning Marital Property Rights and Decedents' Estates.

The constitutional requirement that every judgment of a sister state be given full faith and credit has been enforced in scores of cases involving marital property rights and descent and distribution. There is absolutely no doubt that, so far as concerns *ownership of personal property*, the final judgment of a court having *personal jurisdiction* of the litigants is entitled to recognition in every other state.

Hanson v. Denckla, 357 U. S. 235, 2 L. Ed. 2d 1283 (1958), cited in Petitioner's application to this Court, involved simultaneous litigation in the courts of Florida and Delaware on the question of whether the decedent, a Florida domiciliary, had validly exercised a power of appointment during her lifetime with respect to certain trust assets passed under her will. The principal legal issue was whether the Florida courts had *in personam* jurisdiction of the Delaware trustee under the concept of *McGee v. International Life Insurance Company*, 355 U. S. 220, 2 L. Ed. 2d 223 (1957). The Court held that there were insufficient contacts to justify personal jurisdiction over the non-residents in Florida. However, it was obviously assumed that full faith and credit would have

been given the Florida decree had the court been able to sustain *in personam* jurisdiction, even though the properties in question were in the custody of the Delaware trustee. See 2 L. Ed. 2d at 1293.

In *Baker v. Baker, Eccles & Co.*, 242 U. S. 394, 61 L. Ed. 386 (1917), the distinction between personal jurisdiction and a lack of it is made quite clear. The case involved ownership of stock owned by a decedent in a Kentucky corporation. Under Kentucky law the stock would have gone one-half to the decedent's widow and one-half to his mother, whereas under Tennessee law, all of it would have gone to the widow. The widow secured a judgment in Tennessee holding that the decedent was domiciled in that state and that she, under Tennessee law, was the owner of the stock. However, the mother was not personally made a party to the Tennessee proceedings. Meanwhile, the mother had provoked an administration in a Kentucky court, which found that the decedent was a resident of that state; the widow was not properly joined as a party in Kentucky. However, the widow later filed suit against the corporation in Kentucky to seek issuance of new stock certificates, and the mother intervened. The Kentucky court again held that the decedent was domiciled in that state. The Court held that the Tennessee judgment was not entitled to full faith and credit *because no personal jurisdiction over the mother was ever obtained.* It seems conceded that, had such jurisdiction been present, the judgment would have been conclusive regardless of the location of the stock.

In divorce and separation cases the determination of domicile is often critical, and ultimately determines the ownership of marital property. The courts have not hesitated to say that, if a party makes a personal appearance and actively contests the issues of domicile, the resulting judgment is final and must be recognized in every other

state.[25] Likewise, in probate matters valuable property rights are resolved by a decision as to the decedent's domicile; again determination of this question in a court having jurisdiction over the parties is final.[26] *In all of these cases the location of the personal property involved is irrelevant, as it should be. There is, of course, no difference whatever between those cases and the present case*: THE PRINCIPLE IS THAT THE PARTIES HAVE ACTIVELY LITIGATED THE QUESTION NOW BEFORE THE COURT IN THE STATE OF NEW YORK, AND REGARDLESS OF ANY FICTIONAL LOCATION OF THE INTANGIBLE PROPERTIES IN LOUISIANA FOR CERTAIN PURPOSES, THE CASE CANNOT BE RETRIED.

Intangible personal properties have no situs except by a legal fiction. They may have more than one situs: They may have a fictional situs one place for one purpose and another place for another purpose. But once a court having jurisdiction *in personam* of the parties who are concerned with those incorporeal rights fixes the rights of the parties, that ends the matter. For example, in *Estin v. Estin*, 334 U. S. 541, 92 L. Ed. 1561 (1948), the Supreme Court held that a New York judgment granting a wife permanent monthy alimony created in her a "property interest" which was an intangible, jurisdiction over which could not be exerted through control over a physical thing.

Even where land is the subject matter, the Full Faith and Credit Clause has considerable application. As long ago as 1891, in *Carpenter v. Strange*, 141 U. S. 87, 35 L. Ed. 640, the Supreme Court held that where the New York court had *personal jurisdiction* over the parties it could coerce them *to take action with respect to land in*

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[25] *Sherrer v. Sherrer*, 334 U. S. 343, 92 L. Ed. 1429 (1948).

[26] *Texas v. Florida*, 306 U. S. 398, 83 L. Ed. 817 (1938).

another state, even though the court could not affect the land title directly.

The list of authorities could be extended almost indefinitely. Suffice it to say that the courts are simply not going to permit a party who has once litigated an issue to relitigate that which has been finally decided against him. The Full Faith and Credit Clause is thus a constitutional codification of the law of res judicata.[27]

D. Petitioner Has Failed to Meet the Issue of Constitutional Full Faith and Credit, and Instead Has Belatedly Raised Questions of Due Process and Equal Protection Which Were Neither Seriously Urged in the Louisiana Courts Nor Raised in the New York Courts At All.

We have previously commented that the widow originally urged upon the Louisiana district court the principle of "priority of jurisdiction" in attempting to avoid the effect of the judgment of the New York Surrogate's Court. When later faced with final affirmation of that judgment by New York's appellate courts, she altered her position by arguing that Louisiana had *exclusive* jurisdiction based on the so-called situs of the intangible properties in Louisiana. She has not previously met the question of full faith and credit, and her Petition plainly shows that she has not done so here. A brief look at the authorities she cites in this Court is indicated:

Clark v. Williard, 294 U. S. 211, 79 L. Ed. 865 (1935), involved a controversy between the liquidator of an Iowa corporation and certain judgment creditors of the corporation who sought to execute on property it owned in Montana. The extent of the holding is that, although Iowa is entitled to say that a liquidator with title appointed pursuant to her statutes shall be recognized as

[27] See, for example 50 C. J. S., *Judgments*, § 689.

such by Montana, Iowa may not by her statutes say what distribution of Montana assets a liquidator with title must make. The opinion does not contain the slightest suggestion that the parties had previously litigated the question of ownership of the assets in a prior proceeding, and the only full faith and credit issue in the litigation thus involved the extent to which Montana was required to give recognition to the applicable Iowa *statutes.*[28] Moreover, there is no mention in the Court's opinion of the nature of the property with which the suit was concerned, that is, whether it was land, or tangible or intangible personalty.

Pink v. A. A. A. Highway Express, Inc., 314 U. S. 201, 86 L. Ed. 152 (1941), is but another case in which the Court entertained the requirements of full faith and credit as applied to *statutes* of another state rather than *judgments.*

The only other authority mentioned in the Petition is *Hanson v. Denckla*, 357 U. S. 235, 2 L. Ed. 2d 1283 (1958), discussed previously, in which the Court failed to find that the parties were personally subject to the jurisdiction of the Florida court. The case plainly supports Respondents' position, rather than Petitioner's, and of course recognizes the difficult problems of jurisdiction over intangible personal property where the court does not have *in personam* jurisdiction of the litigants.

Nowhere in Petitioner's application to this Court do we find the barest reference to any of the full faith and credit cases[29] relied on in the Louisiana court's opinion. We find

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[28] See cases distinguishing between statutes and judgments for purposes of full faith and credit, *supra*, pages 14-16.

[29] *Magnolia Petroleum Company v. Hunt*, 320 U. S. 430, 88 L. Ed. 149 (1944); *Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 84 L. Ed. 85 (1940); *Durfee v. Duke*, 375 U. S. 106, 11 L. Ed. 2d 186 (1963); and *Milliken v. Meyer*, 311 U. S. 457, 85 L. Ed. 278 (1941).

only the unsupported general statement (and this, despite the widow's active participation in the New York suit) that the disposition made by the Louisiana court of the case by application of the Full Faith and Credit Clause somehow offends Petitioner's Fourteenth Amendment guarantees by divesting her of vested property rights and by denying her privileges afforded Louisiana residents.

It is appropriate here to note the lack of procedural background or basis for the constitutional complaints by Petitioner in this Court. Her petition (pp. 10-11) recites that the federal questions, as she delineates them, were first presented in the Louisiana district court by way of *Respondents'* efforts to cause that court to give full faith and credit to the New York decree. The federal questions presented by Petitioner, in her certiorari application to this Court, however, are *not* ones of full faith and credit but of due process and equal protection—questions which she utterly failed to raise in the district court by pleading, brief or any other means. This is so notwithstanding that she filed a comprehensive brief in opposition to Respondents' motion for partial summary judgment in which the issue of full faith and credit was initially tendered. Not one word is said in that brief to the effect that application of full faith and credit would result in denial of due process or equal protection.

In the Louisiana Court of Appeal, Petitioner filed a brief of fifty pages. She devoted a total of *two short paragraphs* (at pages 24 and 30, respectively), with *no citation of authority*,[30] to the constitutional questions on which she now seeks certiorari, and the court made no mention of them in its opinion.

Due process and equal protection simply have never been issues in this case.

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[30] Similiarly, Petitioner refers in her present application to no decision on the subject of due process and equal protection.

If Petitioner feared that an adverse decision in New York would divest her of property rights accorded her by the community property laws of Louisiana, or that such a decision would result in her being denied privileges available to citizens of Louisiana, then the proper forum for raising these allegedly important issues was not *Louisiana* (whose courts, at the time the case was presented to them, were precluded by res judicata and full faith and credit from re-examination of matters already determined) but *New York*, where the ownership of the properties was initially litigated. After all, if Petitioner possessed any vested rights under Louisiana law (which is, of course, denied), she certainly possessed them at the time she participated in the New York proceedings. *IN FACT, WHETHER OR NOT PETITIONER HAD ANY RIGHTS UNDER LOUISIANA LAW WAS PRECISELY THE QUESTION THAT SHE LITIGATED IN THE NEW YORK COURTS!* Those courts afforded her full due process of law and, having done so, determined that the law of the matrimonial domicile, New York, was the proper law to be applied. The record is barren of evidence that the Fourteenth Amendment questions were raised in New York, and it seems apparent from the New York courts' opinions (App. pp. 34a; 54a) that the case which was presented for resolution there was purely one of choice of law. Petitioner should have raised there the federal questions she now urges, and, we submit, she lost her right to seek review in this Court by not coming here following the decision of New York's highest court.

In summary, the proceedings in both States reflect that Petitioner failed to raise timely any substantial federal question, her only reference to due process and equal protection[31] being at the appellate level in Louisiana, and

[31] For a case rejecting a similar equal protection argument made by a widow, and involving Louisiana property, see *Conner v. Elliot*, 18 How. 591, 15 L. Ed. 497 (1856).

there in such an inconsequential way that mention of it in the court's opinion was not warranted. The only substantial federal question decided in either New York or Louisiana was the decision applying full faith and credit. That question was decided in favor of applying the constitutional guarantee, and it was decided exactly in accord with applicable decisions of this Court.

II

The New York Courts Were Correct in Holding That Ownership of Intangible Personal Property Is to Be Resolved by Application of the Law of the Matrimonial Domicile.

As previously shown, the correctness of a final decision is not a proper subject of inquiry in the courts of a sister state that are asked to give the decision constitutional recognition. However, we believe it worthy of comment to point out that this Court, by refusing certiorari, will not thereby countenance the enforcement of an unjust or erroneous decision. It was entirely proper for Petitioner to lose her case in New York, because the courts there decided the controversy on the basis of well-accepted choice of law rules which do not support her claim of ownership. Moreover, even though the posture of the Louisiana jurisprudence on the question is not entirely free of doubt, we earnestly submit that the Supreme Court of that state in all probability would have reached the same conclusion as that reached in New York had the case gone to Louisiana's highest court on the choice of law question.

The decedent and his wife were not married in Louisiana and they never resided in that state as husband and wife (R. 289). The state of their matrimonial domi-

cile, as well as the domicile of the decedent at his death, was New York (App. pp. 35a, 41a; R. 17, 19). The case involves only intangible, incorporeal properties. The administration of the estate is in New York. The executrix is a resident and domiciliary of that state (R. 12). There is an estate tax due the State of New York on the property in question, but no inheritance tax is due the State of Louisiana.[22] There are no debts of the ancillary Louisiana succession other than those arising in respect of inheritance taxes on land and expenses of administration (R. 80-86), and there is accordingly no need for an administration of the personal property in that state. However, there are debts and claims in the domiciliary administration (R. 148) to which the personal property in Louisiana ultimately will be subject.

It is therefore not surprising that the New York courts found that their state had the paramount, if not exclusive, governmental interest in the marriage and its incidents, and they gave application to the rule that the state of the matrimonial domicile (or, in the case of separate domiciles, the law of the state of the domicile of the spouse who acquired the property) controls as to ownership of intangible personal property. That their decision is the prevailing rule to be applied in marital property cases is reflected by a wealth of authority:

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[22] *Louisiana Revised Statutes 47:2404* specifically excepts intangible property from inheritance taxes, if owned by a non-resident, obviously on the theory that the domicile is the legal situs of the property and determines its descent and distribution. The estate tax levied by the State of New York deals with intangible personal property in exactly the same fashion as does the Louisiana tax law. Under New York law, the gross estate of a deceased resident is defined as his Federal gross estate (whether or not a Federal Estate Tax return is required to be filed) reduced by the value *of real or tangible personal property having an actual situs outside New York.* (*Tax Law*, §956 (a); *Consolidated Laws of New York*). Thus the estate includes *intangible* personal property owned by the decedent at the time of his death, wherever located.

"§ 290. MOVABLES ACQUIRED DURING MARRIAGE.

Interests of one spouse in movables acquired by the other during the marriage are determined by the law of the domicil of the parties when the movables are acquired. *Comment:*

"* * *

"C. *When spouses have separate domiciles.* If the spouses have separate domiciles at the time of the acquisition of movables, the law of the domicil of that spouse who acquires the movables determines the extent of the interest of the other spouse therein."

Restatement, Conflict of Laws, § 290.

"In accordance with the rule that personalty, for some purposes, may be regarded as having its situs at the domicile of the owner, as stated in the title Conflict of Laws, § 18, the status of personalty as separate or community property is generally controlled by the law of the owner's domicile. Thus certain personal property acquired in another state by a resident of a community property state has been held to be controlled by the community law of the matrimonial domicile, *and intangible personalty at least, acquired in a community property state by a nonresident thereof, has been held to be controlled by the law of the marital domicile.*" (Emphasis supplied.)

41 C. J. S., *Husband and Wife*, § 466, p. 992.

"* * * In this country the courts have divided as between the controlling effect of the law of the domicile of the parties at the time the movables were acquired and the law of the situs. It is believed that by far a majority have applied the law of the domicile at the time and not the situs law.[33] This majority rule is that provided for in the Restatement.

[33] In support of this statement, Professor Stumberg cites, among other cases, *Succession of Packwood*, 9 Rob. 438 (La. 1845).

"There should be no real doubt that the courts of the situs of tangible property, whether real or personal, could effectively make their ownership policy as to marital interest govern if they so desired. But marital property relations are so closely identified with the other marital relations of the spouses that it seems to be better policy, from the point of view of convenience, to give controlling effect to the domiciliary law, in so far as movables are concerned. Local policy with respect to land is, however, generally regarded as of such importance as to override other considerations of convenience."

Stumberg, *Conflict of Laws* (2 ed. 1951), p. 314.

Recognition of this rule was given in a factual situation similar to the present case by the courts of Texas (a community property state) in *Tirado v. Tirado*, 357 S. W. 2d 468 (Tex. App. 1962). It was there held that proceeds from the sale of oil and gas received by the wife, who owned a working interest in Louisiana oil and gas leases at the time of her marriage and who was married and domiciled in Texas until her divorce, were controlled by the law of the matrimonial domicile (Texas), remained therefore her separate property and did not constitute part of the community between her and her husband. The converse of the present facts was entertained by the Florida courts in *Quintana v. Ordoño*, 195 So. 2d 577 (Fla. App. 1967); affirmed, 202 So. 2d 178 (Fla. 1967). Personal property (stock in a Florida corporation) was acquired in Florida, a non-community property state, from earnings made by the husband there at a time when he and his wife were domiciled in Cuba where the community property regime exists. Holding, in conformity with the laws of Cuba, that the stock was community, with the decedent's widow having a vested interest therein, the court made these pertinent remarks:

"As plaintiffs [deceased husband's children by former marriage] contend, the law of the situs has primary control over property within its borders. However, by the almost unanimous authority in America, the 'Interests of one spouse in movables acquired by the other during the marriage are determined by the law of the domicile of the parties when the movables are acquired'.[2] This rule is applicable where the money used to purchase the movables is earned from services performed in a place other than the place of the domicile. We accept this rule, founded on convenience, as the only logical method of determining marital interest in movables.

"[2] Restatement, Conflict of Laws, § 290 (1934); LeFlar, Conflict of Laws, § 176 at 336 (1959); Stumberg, Conflict of Laws, 313 (2d ed. 1951); 2 American Law of Property, § 7.18 at 163 (Casner ed. 1952)." (195 So. 2d 579).

The Louisiana courts have long recognized and given application to this choice of law rule in respect of marital property. See:

Hicks v. Pope, 8 La. 554 (1835);
Young v. Young, 5 La. Ann. 611 (1850);
Succession of McKenna, 23 La. Ann. 369 (1871);
Hyman, Lichtenstein & Co. v. Schlenker & Hirsch, 44 La. Ann. 108, 10 So. 623 (1892);
Williams v. Pope Manufacturing Co., 52 La. Ann. 1417, 27 So. 851 (1900).

The argument to the contrary advanced by Petitioner is that Article 2400 of the Louisiana Civil Code[34] embraces all species of property acquired by non-residents of Louisiana. In addition to the obvious conflict between such an interpretation and the general rule that the law of the own-

[34] Quoted in footnote 11, *supra*.

er's domicile governs the ownership of intangible personal properties, and the problems inherent in determining the situs of intangible properties if the rule is not applied,[35] it is significant that such an interpretation has not been given by the Louisiana courts. In point is the decision rendered in *Williams v. Pope Manufacturing Co., supra,* wherein the court framed the issue presented as follows:

> "* * * [T]he question for consideration is whether (1) the damages sued for by the plaintiff in her own right, as having been sustained by her while temporarily in Louisiana, and which accrued to her separately, are subject to and to be controlled by the law of her matrimonial domicile; (2) or to be governed and controlled by the laws of the state of Louisiana which regulate the matrimonial relations and property rights of married persons who reside outside of its limits but acquire property rights within its limits." (52 La. Ann. 1424.)

Holding that Article 2400 is not applicable to intangible personal property, the court announced:

> "* * * (7) That under the law governing the jurisprudence in the State of Mississippi *personal property* that is situated at the domicile of a citizen of that state is governed thereby, and same does not become subject to the law of Louisiana. (8) *That the foregoing rule is especially applicable to 'debts which follow the creditor's person.'* (9) That the rule thus announced does not apply to personal or movable property situated in this state, but it *does apply to debts and other incorporeal rights, which attach to the per-*

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[35] It should be borne in mind that, in the present case, the decedent by the mere stroke of his pen could have transferred bank deposits from Louisiana to New York prior to his death, and could have with the same ease caused stock certificates, bonds, etc., to be sent to him in New York.

son of the creditor, and pass with him into any jurisdiction where he may go." (52 La. Ann. 1439; emphasis supplied.)

The late renowned Louisiana authority, Professor Harriet S. Daggett, in her text, *The Community Property System of Louisiana* (1949), has said of the *Williams* case:

> "*This decision* * * * *would seem to be indicative on the point that no attempt will be made to bring choses in action under the community regime, so far as nonresidents are concerned.*"[36] (p. 111; emphasis supplied.)

And in an article entitled "Marital Property and the Conflict of Laws," 5 *Louisiana Law Review* 167, 170 (1942-44), the author notes that, while Article 2400 of the Civil Code prescribes the application of the *lex rei sitae* in respect of immovables acquired in Louisiana by nonresident married persons,

> "It is doubtful whether this section embraces movables."

The intangible personal properties involved in this proceeding are clearly choses in action or incorporeal rights which have their situs at the domicile of the decedent in New York and cannot, under the rule of the *Williams* case, be said to have been acquired in Louisiana within the meaning of Article 2400.[37] The relevancy of the particular

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[36] "Choses in action" correspond to the civil law definition of incorporael rights. See: *Louisiana Civil Code, Article 460*; *Marcenaro v. Bertoli*, 2 La. Ann. 980 (1847); *Gordan & Gomila v. F. Muehler*, 34 La. Ann. 604 (1882); *Pan American Production Co. v. United Lands Co., Inc.*, 96 F. 2d 26 (CCA 5th 1938).

[37] The Louisiana cases holding that the situs of particular kinds of intangible property is at the domicile of the owner are:

Sugar v. State, 243 La. 217, 142 So. 2d 401 (1962). (Interest in partnership characterized as "intangible by nature," with

kind of marital property involved, and its situs, to a proper determination of the applicability of a statute of the character of Article 2400 is emphasized in 41 C. J. S., *Husband and Wife*, § 466, p. 991:

> "As a general rule the law of the matrimonial domicile controls the property rights of husband and wife. The character of the property as community or separate may be controlled by its actual or fictional situs, and *in determining the applicability of a community property statute to property acquired in one state while the matrimonial domicile is in another, the situs of the property must be determined by reference to the general distinction between movable and immovable property.*" (Emphasis supplied.)

In view of the limited scope of Article 2400, we submit that the well recognized rule of the matrimonial domicile in matters of ownership of intangible personal property is firmly fixed in the jurisprudence of Louisiana. We concede, as we must, that the majority of the Louisiana Court of Appeal for the Second Circuit expressed a contrary opin-

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situs at domicile of partner rather than in the state where the partnership was conducted.)

Succession of Rosenthal, 163 La. 673, 112 So. 525 (1927). (Bonds were intangible movables having their situs at domicile of owner.)

Peters v. Cooper, 90 So. 2d 892 (La. App. 1956). (Corporate stock for which certificates were physically in New York held to have situs in Louisiana at domicile of owner.)

Succession of Packwood, 9 Rob. 438 (La. 1845). (Bank deposit in Louisiana representing proceeds from sale of sugar crop grown on Louisiana plantation owned by New York married couple had situs in New York.)

See also, *Opinions of Louisiana Attorney General*, 1944-46, p. 1011, and 1948-50, p. 732, holding that deposits in Louisiana banks belonging to non-resident deceased persons are intangibles having a situs at the domicile of the owner and as such are beyond the reach of the Louisiana Inheritance Tax Law.

ion in the dictum which accompanied its application of the Full Faith and Credit Clause. It is that dictum, no doubt, that is responsible for the filing of the Petition which the Court now has before it. But, as previously noted, the Louisiana district court reached the conclusion that the New York Court of Appeals had correctly determined the issue, and, most significantly, the Louisiana Supreme Court was careful to avoid giving its blessing to the *opinion* of the intermediate court, as distinguished from the *result reached*. That opinion, when considered in the light of previous decisions of Louisiana's highest court, plainly is not the final word in Louisiana.

CONCLUSION

It is appropriate to observe in closing that Powell Crichton died some eight years ago. His estate is not a large one—the intangibles involved in the suit amount to some $300,000.00 (before taxes), of which the widow claims one-half. The litigation between Petitioner and Respondents has been heard in three New York courts and two courts in Louisiana. If this Court should grant certiorari and ultimately should reverse the Louisiana appellate court, the case by no means will be at an end. The Louisiana Supreme Court has not yet been heard from on the choice of law question. In addition, even assuming that that tribunal should determine the question in Petitioner's favor, the courts in Louisiana (perhaps beginning at the trial level) will then have for decision the accounting between separate and community assets to which the Louisiana trial was devoted.

The Full Faith and Credit Clause is intended to avoid a proliferation of legal proceedings between the same adversaries in different states. New York has done only what it is unquestionably entitled to do—it has held, ac-

cording to universally accepted principles, that its laws govern the marital property rights of its residents as to intangible personal properties. Petitioner has had a long day in court and to permit her to escape the consequence of a judgment unfavorable to her would violate every precept of fairness, equity and justice. Her Petition should be denied.

Respectfully submitted

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